IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 169 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

FARUKH SHAIKH IBRAHIM

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.A.B.Vyas, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/02/99

ORAL JUDGEMENT

1. Through this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the detention order dated 22.6.1998 passed by the Police Commissioner, Surat City, under Section 3(2) of the Prevention of Anti-social Activities Act (for short "PASA") and has prayed for quashing of the said detention order and has further prayed that he may be released from illegal detention.

2. From the grounds of detention it appears that the petitioner was found to be dangerous person in view of his repeated commission of offences punishable under Chapter : XVI & XVII of the Indian Penal Code. Beside this, two confidential witnesses narrated the two incidents which, in the opinion of the Detaining Authority, created situation prejudicial for maintenance of public order. The detaining Authority also considered alternative efficacious remedies and found that action under Section 107 and 110 of the Code of Criminal procedure could not be efficacious. Notice of externment was also issued to the petitioner under Section 56(A) & (B) of the Bombay Police Act on 30.3.1998. Still the petitioner committed offence during the period when show cause notice was in force against him. The details of the subsequent commission of offence are to be found at Sr.No.2 of the grounds of detention.

3. Learned Counsel for the petitioner has challenged the impugned order only on one ground that the activities of the petitioner were not prejudicial for maintenance of public order.

4. From the grounds of detention it is clear that there was enough material before the detaining Authority to come to subjective satisfaction that the petitioner is a dangerous person. Under Section 2(c) of the PASA a person is said to be dangerous person who habitually commits offences punishable under Chapter : XVI and XVII I.P.Code or under Chapter : V of the Arms Act. The two registered offences disclosed in the grounds of detention were certainly offences punishable under Chapter : XVI & XVII of the I.P.Code respectively. The first case was registered under Section 394 I.P.Code which is punishable under Chapter : XVII and the second case is punishable under Chapter : XVI I.P.Code. Besides this the two confidential witnesses also stated about the criminal activities of the petitioner in the company of his accomplices in which injuries were caused by sharped edged weapon, not only to the two witnesses, but also to the persons who collected to save the witnesses. In this way repetition of commission of offences punishable under Chapter XVI and XVII I.P.Code was fully made out before the detaining Authority. He was therefore justified in declaring the petitioner as dangerous person.

5. The next point to be seen is whether a dangerous person can be detained under PASA or is there any further requirement for passing the detention order. Needless to say that a dangerous person cannot be detained under PASA only because he was involved in commission of offences

punishable under Chapter : XVI and XVII I.P.Code. Unless the activities of such person are found to be prejudicial for maintenance of public order he cannot be preventively detained.

6. For this it is to be seen whether the material before the detaining Authority was sufficient to arrive at subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order.

7. The first material is registration of two criminal cases at CR Nos.316/97 and 175/98. From the narration of events of these two cases given in the grounds of detention it can hardly be said that public order was disturbed on these two occasions.

8. The next material is the statements of two confidential witnesses. The statement of the two confidential witnesses have to be examined in the light of extended meaning of activities being prejudicial for maintenance of public order as contained in Explanation to Sub-Section 4 of Section 3 of PASA. Under this explanation extended meaning has been given by the Legislature as to what constitutes the disturbance of public order. Inter-alia it is found in this explanation that if the activities are such which are likely to create or has created sense of alarm, danger, injury to health, injury to person and property, etc. then such activities can be said to be prejudicial for maintenance of public order. Maintenance of public order in such cases is not to be understood in the abstract sense that the activities should necessarily create situation like rioting and affray. If the extended meaning of public order as contained in Explanation to Sub.Section 4 of Section 3 of the PASA is kept in mind then there should be no difficulty in coming to the conclusion from the statements of the two confidential witnesses that the incident took place at public place in which injuries were caused not only to the two witnesses, but also to the members of the public who collected at the spot to save the witnesses.

9. The first incident occurred on 18.4.1998 at 8.00 p.m. The witness was passing from Surat City area. It was obviously a public place. At that time the petitioner in the company of his accomplices had shown knife to the witness and asked him to part with whatever was kept by him in his pocket, etc. The witness refused to oblige the petitioner whereupon he was beaten by kicks and fists. The witness shouted for help. People from

the locality and person passing on the road, business-men and Larri-gallawalas from the nearby locality gathered. Some of them tried to save the witness. On the signal given by the petitioner, his accomplices and the petitioner assaulted the persons who collected at the spot with knife as a result of which those persons started running away. The traffic was disturbed. The shops and larri-gallawalas were shut down. The windows and doors were closed and the owners of the houses fell in an atmosphere of terror and fear. The witness was not only beaten, but he was forced to part with Rs.850/which was kept by him. His wrist watch was also snatched away and he was threatened that in case he would lodge complaint with police he will be done to death. Thus, from this incident the indication is that it was not an incident between the petitioner and the witness, but it was an incident between the petitioner and his accomplices on the one hand and the witness and the members of public, who collected to save the witness, on the other hand and in this incident the witness as well as the persons, who collected at the spot were injured by sharp edged weapon. Atmosphere of fear was created. It was not imaginary fear but a real fear, inasmuch as shops were closed, larri-gallawalas also closed their business, the persons who collected at the spot ran for safety. Atmosphere of terror was created in the locality which certainly disturbed the public peace and tranquility in the locality in which the incident took place. The witness was not only beaten, but Rs.800/were snatched from the witness, and the petitioner also threatened the witness that if he will approach the police and lodge the complaint he shall be done to death. If such incident is not prejudicial for maintenance of public order then Explanation to Sub.section 4 of Section 3 has to be re-written by the Legislature.

10. So far as the second incident is concerned it is not worthy that it occurred on 5.5.1998, whereas the show cause notice under Section 56(A) & (B) of the Bombay Police Act for showing cause why the petitioner be not externed was issued on 30.3.1998. In this incident also when the witness was passing from Surat City area the petitioner along with his two associates stopped him and assaulted the witness by giving him blows from kicks and fists. It was done under the doubt that the witness was police informer. On the alarm of the witness persons from the nearby locality, larri-gallawala holders, vehicle owners collected. Some of them tried to save the witness. Under the instruction of the petitioner he and his companion assaulted the people who collected at the spot with knife, razor and pointed weapons. Again

similar situation was created as in the first incident, viz. shops and larri-gallawals were shut down immediately and windows and doors of the houses were also closed. Rs.400/- were snatched from the witness. He was threatened not to inform the police otherwise he would be killed. This is also a situation akin to the situation narrated by the first witness and this situation also created a situation prejudicial for maintenance of public order.

11. The detaining Authority took into consideration alternative remedies, viz. less drastic remedies. In his opinion action under Section 107 and 110 Cr.P.C. was not sufficient to prevent the petitioner from repeating his criminal activities. Significantly the grounds of detention disclose that show cause notice under Section 56-A and B of the Bombay Police Act was issued on 30.3.1998 proposing externment of the petitioner and calling upon him to show cause. This action also could not have proved efficacious because after issuance of this notice the petitioner committed second offence which is disclosed at Sr.No.2 of the grounds of detention, viz. on 9.5.1998 at 2.30 p.m. A case has been registered at CR No. 175/98. Thus, consideration of alternative efficacious remedies by the detaining Authority hardly requires any interference.

12. In the grounds of detention the detaining Authority has further mentioned that the petitioner is in Jail for the offence at Sr.No.2 of the grounds of detention. The detaining Authority was therefore aware of the fact that the petitioner was in judicial custody in connection with CR No.175/98. If after issuance of show cause notice for proposed externment the petitioner could dare to commit another offence on 9.5.1998, the detaining Authority was justified in drawing inference that on being released on bail the petitioner was likely to commit similar offences. For this inference no fresh material was required to be placed before the detaining Authority because the petitioner was on bail in the first registered offence, thereafter show cause notice for externment was issued and then he committed another offence. In these circumstances on being enlarged on bail he was likely to commit further offence. Thus, on this point also the subjective satisfaction of the detaining Authority requires no interference.

13. In the result the order of detention is perfectly legal, valid and justified. No interference in the impugned order of detention is required or called for. The petition is, therefore, dismissed. The order of the

detaining Authority is confirmed.

sd/-

Date : February 24, 1999 (D. C. Srivastava, J.)

sas